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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,640	01/14/2004	Darold Dean Tippey	19,955	5822
23556	7590	03/07/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			PICKETT, JOHN G	
		ART UNIT	PAPER NUMBER	
		3728		

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

2P

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/758,640	TIPPEY, DAROLD DEAN	
	Examiner Gregory Pickett	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 February 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/11/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. This Office action acknowledges the applicant's Amendment submitted 14 February 2005. Claims 1-20 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

3. Claims 1-5, 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (US 3,145,840) in view of Roussel (US 5,377,837; provided by applicant).

Regarding claims 1, 10, Wright discloses a package **9** with a first sleeve **12** having sidewalls and a first wall (bottom of container); a second sleeve **11** having sidewalls and a second wall **15**; an array of articles **10** aligned as claimed; an opening **16**; and an attachment and release member **17**. Wright is capable of functioning as claimed. Wright lacks, or does not expressly disclose the articles initially retained in a compressed state.

Roussel discloses a package **1** with articles initially stored in a compressed state, which is subsequently expanded upon opening of the package (see for example, Abstract). Roussel teaches this compression in order to reduce the package volume for storage and transport (Col. 1, lines 30-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the location of the

attachment and release member 17 to a lower position in order to compress the articles as taught by Roussel for the purpose of reduced volume.

As to claim 2, Wright-Roussel discloses a rectangular cross-sectional configuration.

As to claim 3, Wright-Roussel does not disclose expressly a square cross-sectional area. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the package of Wright-Roussel in a square cross-sectional area because applicant has not disclosed that the square shape provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with a rectangular or square cross-section. Therefore, it would have been an obvious matter of design choice to modify the cross-section of Wright to obtain the invention. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

As to claims 4, 5, 14, and 15, Wright-Roussel discloses the claimed invention except for the specific heights of the sidewalls. It would have been an obvious matter of design choice to provide the sidewalls in the claimed heights, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 7 and 8, Wright-Roussel discloses cardboard material (Wright, Col. 2, lines 1-3).

As to claim 9, Roussel discloses a pliable material (see for example Col. 1, lines 8-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the package of Wright-Roussel from a pliable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claims 11 and 12, opening **16** of Wright is sized and shaped as claimed.

As to claim 13, Wright-Roussel discloses the claimed number of articles (Wright, Figure 1)

4. Claims 6 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright-Roussel as applied to claim 1 above, and further in view of Tipping (US 5,219,421).

Regarding claim 6, Wright-Roussel discloses the claimed invention except for the removable flap.

Tipping discloses a removable flap **104** for an opening **56**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Wright-Roussel with a removable flap as taught by Tipping in order to protect the articles until use.

Regarding claim 16, Wright-Roussel-Tipping, as applied to claim 6 above, discloses the claimed invention.

As to claim 17, Wright-Roussel-Tipping discloses a pull-tab (Wright, 19).

As to claim 18, Wright-Roussel-Tipping discloses the claimed number of articles (Wright, Figure 1).

As to claim 19, Wright-Roussel-Tipping discloses the claimed invention except for the specific height of the sidewalls. It would have been an obvious matter of design choice to provide the sidewalls in the claimed height, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 20, Wright-Roussel-Tipping discloses the claimed volumetric variance (Wright, Figures 1 & 3).

### ***Response to Arguments***

5. Applicant's arguments filed 14 February 2005 have been fully considered but they are not persuasive.

6. In response to the applicant's arguments that Roussel teaches away from the claimed invention, the portion of Roussel to which the applicant refers is a discussion with the problems of the prior art. In Roussel's discussion, the prior art has no expansion and is used to dispense while in a compressed state. The base reference,

Wright, dispenses in an uncompressed state and therefore the problems discussed by Roussel (i.e., the tendency of the products to emerge) would not have been a factor. The motivation of compact storage and transportation, however, would have still been valid and properly applicable to Wright.

7. In response to applicant's argument that Roussel teaches a different orientation, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*gop*  
Greg Pickett  
Examiner  
23 February 2005

*mickey*  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700